

§ 1209.20

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§ 1209.20 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1209.21 State and United States.

(a) *State* means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *United States* means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

MUSHROOM COUNCIL

§ 1209.30 Establishment and membership.

(a) There is hereby established a Mushroom Council of not less than four or more than nine members. The Council shall be composed of producers appointed by the Secretary under § 1209.33, except that, as provided in paragraph (c) of this section, importers shall be appointed by the Secretary to the Council under § 1209.33 once imports, on average, reach at least 50,000,000 pounds of mushrooms annually.

(b) For purposes of nominating and appointing producers to the Council, the United States shall be divided into three geographic regions and the number of Council members from each region shall be as follows:

(1) *Region 1*: All other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California—2 Members.

(2) *Region 2*: The State of Pennsylvania—4 Members.

(3) *Region 3*: The State of California—2 Members.

(c) Importers shall be represented by a single, separate region, referred to as Region 4, consisting of the United States when imports, on average, equal or exceed 50,000,000 pounds of mushrooms annually.

(d) At least every five years, and not more than every three years, the Council shall review changes in the geographic distribution of mushroom pro-

duction volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years, and, based on such review, shall recommend to the Secretary reapportionment of the regions established in paragraph (b) of this section, or modification of the number of members from such regions, as determined under the rules established in paragraph (e), of this section or both, as necessary to best reflect the geographic distribution of mushroom production volume in the United States and representation of imports, if applicable.

(e) Subject to the nine-member maximum limitation, the following procedure will be used to determine the number of members for each region to serve on the Council under paragraph (d) of this section:

(1) Each region that produces, on average, at least 50,000,000 pounds of mushrooms annually shall be entitled to one representative on the Council.

(2) As provided in paragraph (c) of this section, importers shall be represented by a single, separate region, which shall be entitled to one representative, if such region imports, on average, at least 50,000,000 pounds of mushrooms annually.

(3) If the annual production of a region is greater than 110,000,000 pounds, but less than or equal to 180,000,000 pounds, the region shall be represented by 1 additional member.

(4) If the annual production of a region is greater than 180,000,000 pounds, but less than or equal to 260,000,000 pounds, the region shall be represented by 2 additional members.

(5) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

(6) Should, in the aggregate, regions be entitled to levels of representation under paragraphs (e)(1), (2), (3), (4) and (5) of this section that would exceed the nine-member limit on the Council under the Act, the seat or seats assigned shall be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

(f) In determining the volume of mushrooms produced in the United States or imported into the United States for purposes of this section, the Council and the Secretary shall:

(1) Only consider mushrooms produced or imported by producers and importers, respectively, as those terms are defined in §§1209.8 and 1209.15; and

(2) Use the information received by the Council under §1209.60, and data published by the Department.

(g) For purposes of the provisions of this section relating to the appointment of producers and importers to serve on the Council, the term *producer* or *importer* refers to any individual who is a producer or importer, respectively, or if the producer or importer is an entity other than an individual, an individual who is an officer or employee of such producer or importer.

[58 FR 3449, Jan. 8, 1993, as amended at 74 FR 50919, Oct. 2, 2009]

§ 1209.31 Nominations.

All nominations for appointments to the Council under §1209.33 shall be made as follows:

(a) As soon as practicable after this subpart becomes effective, nominations for appointment to the initial Council shall be obtained from producers by the Secretary. In any subsequent year in which an appointment to the Council is to be made, nominations for positions whose terms will expire at the end of that year shall be obtained from producers, and as appropriate, importers, and certified by the Council and submitted to the Secretary by August 1 of such year, or such other date as approved by the Secretary.

(b) Nominations shall be made at regional caucuses of producers or importers, or by mail ballot as provided in paragraph (e), in accordance with procedures prescribed in this section.

(c) Except for initial Council members, whose nomination process will be initiated by the Secretary, the Council shall issue a call for nominations by February 1 of each year in which nominations for an appointment to the Council is to be made. The call shall include, at a minimum, the following information:

(1) A list by region of the vacancies for which nominees may be submitted

and qualifications as to producers and importers.

(2) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3) A list of those States, by region, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Council, and national and State producer or importer associations, if known, and of the regional caucuses, if any.

(d)(1) Except as provided in paragraph (e), nominations for each position shall be made by regional caucus in the region entitled to nominate for such position. Notice of such caucus shall be publicized to all producers or importers within the region, and to the Secretary, at least 30 days prior to the caucus. The notice shall have attached to it the call for nominations from the Council and the Department's equal opportunity policy. Except with respect to nominations for the initial appointments to the Council, the responsibility for convening and publicizing the regional caucus shall be that of the Council.

(2) All producers or importers within the region may participate in the caucus. However, if a producer is engaged in the production of mushrooms in more than one region or is also an importer, such person's participation within a region shall be limited to one vote and shall only reflect the volume of such person's production or imports within the applicable region.

(3) The regional caucus shall conduct the selection process for the nominees in accordance with procedures to be adopted at the caucus subject to the following requirements:

(i) There shall be two individuals nominated for each open position.

(ii) Each nominee shall meet the qualifications set forth in the call.

(iii) If a producer nominee is engaged in the production of mushrooms in